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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. 09/870,428
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Filed May 30, 2001

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GROUP 3700

Thomas A. Slopsema et al

Group 3747

METHODS AND APPARATUS FOR CONTROLLING A SHUTDOWN OF AN INTERNAL COMBUSTION ENGINE

Examiner Arnold Castro
(Fax No. 703-872-9303)

AMENDMENT AFTER FINAL REJECTION
IN RESPONSE TO PAPER NO. 9

Commissioner for Patents
Washington DC 20231

This amendment is in response to the Final Office Action mailed on January 6, 2002, wherein Claim 21 were rejected. Claims 1-21 remain pending.

ISSUE

Whether Claims 1-21 are unpatentable over U.S. Patent No. 4,090,481 to Gospodar in view of U.S. Patent No 5,563,453 to Nyfelt et al.

ARGUMENT

Claim Rejections Under 35 U.S.C § 103

On page 2 of the Final Office Action, the Examiner rejected Claims 1-21 under 35 U.S.C § 103 as being unpatentable over Gospodar in view of Nyfelt. Applicants respectfully disagree with the Examiner. Gospodar, in column 2, lines 41-62, describes the need for the ignition switch to be manually moved by an operator of the vehicle to control a mechanically linked

throttle plate. Gospodar explicitly teaches away from using a computerized controller, as the switch 14 must be manually operated and the throttle plate 2 is a manually controlled throttle plate controlled by a linkage 4 and not controlled by a computer or electronic controller.

Furthermore, Gospodar is completely silent with respect to a computerized controller and the combination suggested by the Examiner would be inoperable. It would be highly speculative of the Examiner to assert that Gospodar or Nyfelt, singly or in combination, teaches or suggests the use of a computerized controller to control a throttle.

THE SCOPE AND CONTENT OF THE PRIOR ART

1. Gospodar

a. In general, Gospodar discloses a throttle closing mechanism for an internal combustion engine that makes use of a throttle closer controlled by a manually operated ignition switch.

b. Gospodar teaches away from using a computerized controller for controlling a throttle plate.

Gospodar, in column 2 lines 40-55, discloses that the ignition switch 14 when manually actuated by the operator energizes an electromagnet to control throttle plate movement. The electromagnet of Gospodar has no machine intelligence and requires manual interaction from an operator. Gospodar explicitly teaches away from using a computerized controller as manual interaction is required to make the apparatus of Gospodar operate. No clearer example of teaching away could be found in the art.

2. Nyfelt

a. In general, Nyfelt et al discloses a method and apparatus for remotely controlling one or more vehicle functions.

b. Nyfelt. is completely silent with respect to throttle control and does not teach or suggest controlling a throttle plate with a computer or controller.

Nyfelt describes a method for controlling one or more of the functions or facilities of a vehicle using wireless systems. While Nyfelt describes shutting of an ignition switch, Nyfelt is

completely silent with respect to throttle control. There is no teaching or suggestion to combine Nyfelt with a throttle control system to terminate intake air into an internal combustion engine.

3. The suggested combination of Gospodar and Nyfelt by the Examiner is improper.

Gospodar specifically teaches away from using a computer to control a throttle. The suggested combination of the Examiner is improper, references cannot be combined where the reference teaches away from their combination. See MPEP Section 2145.

4. The combination of Gospodar and Nyfelt is inoperable.

Gospodar et al. teaches away from using a computer to control a throttle and the apparatus of Gospodar has no capability to be computer controlled. There is no suitable computer interface for Gospodar, as there is only a switch that is manually operated. The apparatus of Gospodar does not have the capability to accept discrete or analog signals from a computer or controller. To use a computer controller there must be some sort of machine interface for inputs and outputs such as input and output cards. Gospodar lacks any type of input and output interface for a computer controller. Furthermore, the throttle plate of Gospodar is controlled by traditional mechanical linkages and not by computer controlled actuators. An attempt to combine Gospodar and Nyfelt would generate a nonfunctioning control system.

In establishing a prima facie case of obviousness, the Examiner must establish that: there is a suggestion or motivation in the art to combine the references; there is a reasonable expectation of success; and the prior art references must teach or reference all the claim limitations. The prior art cited by the Examiner, singly or in combination does not teach or suggest the present invention.

If the Examiner relies on personal knowledge that the apparatus of the present invention is obvious in light of the cited art, Applicants respectfully request support for this assertion in the form of an affidavit that shall be subject to contradiction or explanation by the affidavits of the Applicant and other persons under 37 C.F.R. 1.104 (d)(2).